

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
NORTHERN DIVISION

MIGUEL ORTEGA and BENJAMIN
ORTEGA,

Plaintiffs,

vs.

Case No.: C 07-02659 JCS (ADR)

CITY OF OAKLAND, OAKLAND
POLICE DEPARTMENT, WAYNE
TUCKER, In His Capacity As The
Police Chief Of The City Of
Oakland, RAMON J. ALCANTAR,
Individually And In His
Capacity As A Police Officer
For The City Of Oakland, B.
ORTIZ Individually And In His
Capacity As A Police Officer
For The City Of Oakland, Does
through 200,

Defendants.

DEPOSITION OF BERNARD ORTIZ
Thursday, January 3, 2008

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BY APRIL DAWN HEVEROH, CSR NO. 8759

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DEPOSITION OF BERNARD ORTIZ

I N D E X

EXAMINATION BY:

PAGE

MR. JACOBSEN

4

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INDEX OF PLAINTIFF'S EXHIBITS

(None marked.)

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Also present: Miguel Ortega, Benjamin Ortega, Benjamin
Ortega, and Ana Rosa Ortega

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1 BE IT REMEMBERED, that pursuant to Notice of
2 Taking Deposition, and on Thursday, January 3, 2008,
3 commencing at the hour of 2:18 P.M., at the Law Office
4 of STEVEN R. JACOBSEN, 901 Clay Street, Oakland,
5 California, before me, APRIL DAWN HEVEROH, a duly
6 qualified Certified Shorthand Reporter, License No. 8759
7 in and for the State of California, there personally
8 appeared

9 BERNARD ORTIZ,
10 called as a witness by Plaintiffs, who, being by me
11 first duly sworn to tell the truth under the laws of the
12 State of California, was thereupon examined and
13 testified as hereinafter set forth.

14 ---o0o---

15 EXAMINATION BY MR. JACOBSEN

16 MR. JACOBSEN: Q. Will you state your full
17 name for the record, please.

18 A. Bernard Ortiz.

19 Q. Officer Ortiz, you're employed as a police
20 officer by the City of Oakland?

21 A. Yes.

22 Q. How long have you been so employed?

23 A. 10 years.

24 Q. Have you ever given a deposition before?

25 A. Yes.

1 ordinary patrol officer in your district?

2 A. The patrol guys answer calls for service, for
3 the most part. We were specifically tasked with
4 handling drug dealing at this location. That would be
5 our assignment for the day. Or this individual is
6 wanted; we would be assigned to find this individual and
7 arrest them. That was our day-to-day task.

8 Q. I see. You are a sergeant?

9 A. Yes.

10 Q. And were you a sergeant on May 7th, 2006?

11 A. No.

12 Q. When did you become a sergeant?

13 A. February of 2007.

14 Q. And what was your rank on May 7th, 2006?

15 A. Police officer.

16 Q. So Sergeant is one step up from what you were
17 at that time?

18 A. Yes.

19 Q. Comparing your build with Officer Alcantar's,
20 who is the larger build of the two?

21 A. I am.

22 Q. Now, your last name is Ortiz. It appears to
23 be of Hispanic origin.

24 Do you speak Spanish?

25 A. No.

1 Q. Do you understand any Spanish?

2 A. No.

3 Q. Now, on the morning of May 7th, 2006, did you
4 attend a dedicated lineup?

5 A. Yes.

6 Q. And tell me, what is a dedicated lineup?

7 A. Well, on that day, specifically, it was for
8 Cinco de Mayo, so it was actually a huge lineup that we
9 had. It wasn't for our individual squad. It was a big
10 operation, and we had it at the Eastmont -- the command
11 at the time was Captain Kozicki briefed all the officers
12 on our responsibilities for the day.

13 Q. Now, Cinco de Mayo means May 5th, correct?

14 A. I believe so.

15 Q. Okay. This occurred on May 7th.

16 A. That I don't remember the exact gist of the
17 history of that day.

18 Q. Okay. Was there to be a festival for Cinco de
19 Mayo on May 7th?

20 A. I do know there was a festival, but I don't
21 know the whole -- when it was occurring. I just knew
22 that day, that's what we were working.

23 Q. Was this festival put on by the City of
24 Oakland?

25 A. I don't know.

1 A. It's not so much allowed; it's is it something
2 we need to watch and observe, or is it something that we
3 need to pay attention to? If you had a crowd of 100
4 people, we're not going to secure the police if they're
5 all in one corner. We would monitor.

6 Q. What do you mean, "We're not going to secure
7 the police"?

8 A. You wouldn't send people home for that. Our
9 job is to monitor what's going on with the festival.
10 Now we have to go and see what is going on, why there
11 are 100 people on this corner.

12 Q. At some point you passed by the corner of 62nd
13 Avenue and International Boulevard?

14 A. Correct.

15 Q. And if I slip and say "East 14th Street",
16 you'll know I mean International Boulevard, correct?

17 A. Correct.

18 Q. How many people were in this crowd?

19 A. It was a good-sized crowd. I want to say it
20 was more like 20.

21 Q. Okay. And they were all on one particular
22 corner?

23 A. They were starting on -- it would be the
24 Oakland -- southeast corner, but they were going across
25 International. The crowd would go across International

1 A. I think it was after noticing the first
2 one hitting his brakes was when we decided it was time
3 to act.

4 Q. Okay. And how long had you observed the
5 group?

6 A. Five. I don't have a watch. I would say
7 five to ten minutes. I mean, time is kind of hard to
8 judge when you're not looking at your clock.

9 Q. But that's your best estimate?

10 A. Yes.

11 Q. Okay. And during this time you were parked,
12 you were seated in the car in the lot where they were
13 constructing a mini mart?

14 A. Yes.

15 Q. Were you driving, or was Officer Alcantar?

16 A. I don't remember.

17 Q. Who is senior, or who was, at the time, the
18 senior officer?

19 A. I am.

20 Q. So when you decided it was time to act, what
21 did you intend to do?

22 A. Cite individuals that were carrying a flag, I
23 was going to cite that person, and there was -- I think
24 it was just the flag person that we were going to cite
25 at the time, or in my head, what I was going to do was

1 cite the person with the flag.

2 Q. Did you discuss this at all with Officer
3 Alcantar?

4 A. No.

5 Q. You didn't say, "Let's go do" such-and-such,
6 or "Let's get that guy", or anything like that?

7 A. I don't remember saying anything specific to
8 that nature.

9 Q. Did you and Officer Alcantar decide at the
10 same time that it was time to do something?

11 A. You know, I don't remember if it was the same
12 time decision. I just knew that I was acting.

13 Q. Did you have any discussion at all with
14 Officer Alcantar during the time that you were sitting
15 in the car observing the group of people?

16 A. I don't believe so.

17 Q. What, if anything, did either of you say to
18 alert the other that it was time to act?

19 A. I don't think we said anything. I think I
20 just started acting.

21 Q. And what did you do to start acting?

22 A. Walking towards the crowd, trying to disperse
23 the crowd, going towards the person carrying the flag at
24 the time.

25 Q. So you got out of the car?

1 Q. Still in the lot?

2 A. Correct.

3 Q. Okay. Do you remember which direction the car
4 was facing?

5 A. I do not.

6 Q. Okay. And did Officer Alcantar exit the
7 vehicle at the same time?

8 A. I don't know if it was at the same time, but
9 he did exit the vehicle.

10 Q. Do you remember if he did first or you did
11 first?

12 A. I don't remember.

13 Q. So you began to walk toward the intersection.

14 A. Correct.

15 Q. Were you heading toward any particular corner?

16 A. We were -- I was heading towards the
17 individual carrying the flag.

18 Q. And where was that individual at that time?

19 A. When we exited and started walking, everyone
20 started running. So if I remember correctly, he was
21 going southbound, or it would be Oakland south, down
22 International. I mean not down International; down 62nd
23 Ave. I'm sorry.

24 Q. Okay. Where was he at the time you got out of
25 the car?

1 A. I don't know if he was in the middle of the
2 road or just had started crossing again when we got out
3 of the car.

4 Q. Okay. Started crossing from where to where?

5 A. I can't remember exactly from where. I just
6 remember they were able to get down 62nd Ave. relatively
7 quick.

8 Q. How far was your car from the southeast corner
9 of 62nd and International?

10 A. I couldn't tell you.

11 Q. Do you have an estimate?

12 A. No, because I can't remember exactly where we
13 had parked.

14 Q. Do you remember whether or not the person
15 carrying the flag was on the sidewalk or on the street
16 at the time you got out of the car?

17 A. Again, I can't remember exactly because as we
18 got out of the car, everyone started running. So you
19 would lose track of where people are.

20 Q. And everyone started running south on 62nd
21 Avenue?

22 A. The majority of the group, yes. There was
23 others that went different directions.

24 Q. Okay. And what did you do at that point?

25 A. Started going down 62nd Avenue.

1 A. I remember that because it was distinct, and
2 that's the first time I had ever been called that. They
3 were yelling a whole bunch of stuff at the time.

4 Q. And you hadn't said, either one of you, either
5 you or Officer Alcantar, you hadn't said anything to
6 anyone in this group prior to that?

7 MR. VOSE: I'm going to object to that. I
8 don't think that was his testimony. I think that his
9 answer was that he didn't remember saying anything. I
10 didn't know if Officer Alcantar had said anything.

11 MR. JACOBSEN: Q. That's what I'm asking.

12 MR. VOSE: I'm going to object to the
13 question. You'll have to rephrase it.

14 MR. JACOBSEN: Q. Did either you or Officer
15 Alcantar say anything to anyone in this group before
16 anyone in the group said anything to you?

17 A. I personally didn't say anything yet. I don't
18 know about Officer Alcantar.

19 Q. He could have said things, you just don't
20 remember one way or the other; is that correct?

21 A. Again, I wasn't paying attention to what
22 Officer Alcantar was doing. I don't know exactly what
23 he was doing.

24 Q. But he was within earshot of you, correct?

25 A. I don't remember exactly where he was at. I

1 A. My personal thought is it's the first time
2 anybody ever called me that, so I really didn't make a
3 basis of whether it was insulting or not.

4 Q. Did you, at some point, say anything to anyone
5 in the group?

6 A. I think we were trying -- at one point I'm
7 trying to tell the individual with the flag to come to
8 us or to stop, but that's about it.

9 Q. And what, exactly, did you say to that person?

10 A. You know, I can't remember the exact words.
11 It was a long time ago.

12 Q. Can you remember the gist of what you said?

13 A. No. I do not know the exact words. I
14 wouldn't even try to say what I could have said.

15 Q. Do you remember anything that Officer Alcantar
16 said to anyone that day?

17 A. No.

18 Q. Do you remember anything that you said to
19 anyone during the course of this incident before you and
20 Officer Alcantar eventually left the area?

21 A. I remember talking to an individual, that
22 individual there. I remember the gist of my
23 conversation with him, and that's about it.

24 Q. Okay. Well, we'll get to that part. But
25 that's the only thing you remember?

1 A. Correct.

2 Q. When you arrived at the intersection of 62nd
3 Avenue and International, was that the first time you
4 passed through that intersection that day?

5 A. You know, I don't remember. But the odds are
6 probably not. But again, I don't remember if I had been
7 through there before earlier that day or not.

8 Q. In any case, when you decided to park -- you
9 or Officer Alcantar decided to park your car on the lot
10 on the corner where they were building a mini mart, that
11 was the first time you observed the group of
12 approximately 20 people on the corner or in the
13 environment of the intersection, correct?

14 A. Correct.

15 Q. Whose idea was it to pull over and park at
16 that intersection?

17 A. You know, I don't remember whose idea. I
18 mean, it was a crowd, and that was our responsibility,
19 to deal with crowds. It could have been either one of
20 us.

21 Q. Was the crowd doing anything, other than what
22 you've already told us, as far as crossing the street
23 and the way they were crossing the street?

24 A. No.

25 Q. Other than possibly violating the "pedestrian

1 moving suddenly into the street" statute or ordinance
2 that you mentioned, was the crowd doing anything else
3 that you felt was illegal at the time?

4 A. No, I don't believe so.

5 Q. Did you have any reason to believe that any of
6 the activity that you observed was gang-related?

7 A. No.

8 Q. Okay. So you begin going down 62nd Avenue
9 toward where the flag carrier is moving, correct?

10 A. Correct.

11 Q. And you're on foot?

12 A. Yes.

13 Q. Were you walking or running?

14 A. I think I was kind of -- like a brisk walk.
15 I'm not running in a full sprint, but I am moving rather
16 quickly towards where they're going.

17 Q. And how was the crowd moving? Was it walking
18 or running?

19 A. It was run, slow down, and then -- because the
20 house is right there. After a short distance, then
21 there's that yellow house they went into, that yard
22 right there.

23 Q. And approximately how many of this group of
24 approximately 20 people went toward the yellow house
25 that you referred to?

1 answer.

2 MR. VOSE: Okay. You can answer if you know.

3 THE WITNESS: If you're asking me what Officer
4 Alcantar was thinking at the time he entered the yard,
5 is that what you're asking?

6 MR. JACOBSEN: Q. I'm asking you if anyone
7 has told you, other than your attorney, what Officer
8 Alcantar's justification was or his basis for entering
9 the property at the time that he entered.

10 A. I'm sorry. I'm confused of the question
11 because if you're asking me as he's walking in right
12 then and there, do I know the answer to that question --

13 Q. No, I'm asking you today, do you know the
14 answer to that question?

15 A. Yes.

16 Q. Okay. And what was his justification for
17 entering the private property?

18 A. It's the 148, delaying or obstructing a police
19 officer in the line of duty.

20 Q. Okay. So was it Officer Alcantar's
21 contention, to your understanding, that someone in that
22 property had delayed or obstructed a police officer?

23 A. Well --

24 MR. VERBER: Well, let me just object again.
25 I think it calls for speculation.

1 MR. VOSE: If you're asking him if he knows
2 today what that is, as before, that's fine. If you're
3 asking him if he knew at the moment he entered the yard,
4 as we have already objected to, that calls for
5 speculation.

6 MR. JACOBSEN: Q. No, I'm not asking you to
7 guess as to what Officer Alcantar may have been thinking
8 at the time. I want you to tell us what you know, and
9 if you know something today, even if you didn't know it
10 at that moment, you can answer it with what you know
11 today.

12 A. Well, I can tell you my own personal mindset
13 was the flag carrier leaving from his spot where we were
14 trying to issue a citation and fleeing to the house is
15 148, and my mindset was he was delaying or obstructing a
16 police officer in the line of his duties, if that makes
17 it any -- if you can understand what I'm saying on that.

18 Q. Okay. Did the flag carrier have any way of
19 knowing that either you or Officer Alcantar wanted to
20 issue a citation to him?

21 MR. VERBER: Objection. Calls for
22 speculation.

23 MR. JACOBSEN: Q. As far as you know.

24 A. I thought I said earlier that I was trying to
25 get his attention to stop, but I can't remember the

1 exact wording that I had said for him to stop.

2 Q. Do you know whether or not you succeeded in
3 getting the attention of the flag carrier at that time?

4 A. I can't remember if he looked back at me or
5 not.

6 Q. Have you and Officer Alcantar ever discussed
7 what his basis was for entering the yard at that time?

8 A. Actually, no.

9 Q. Have you discussed with anyone, other than
10 with your attorney, Officer Alcantar's basis for
11 entering the yard at that time?

12 A. No.

13 Q. Where were you when Officer Alcantar entered
14 the yard?

15 A. When Ramon entered, I was maybe three people
16 behind him. If you want to measure in people, I was
17 right behind him when he entered.

18 Q. So you saw him enter?

19 A. Yes.

20 Q. And did you follow immediately after him?

21 A. Oh, yes. I'm not going to let my partner go
22 into the yard by himself.

23 Q. Well, when Officer Alcantar got into the yard,
24 what did he do?

25 A. He confronted the flag carrier.

1 Officer Alcantar and the flag carrier?

2 A. No.

3 Q. Can you say one way or another whether there
4 was any physical contact between Officer Alcantar and
5 the flag carrier?

6 A. No.

7 Q. So you saw someone coming off the porch. What
8 did you do?

9 A. It was that individual right there, and he was
10 focusing on Officer Alcantar and what was going on over
11 there, and immediately I stepped in the middle of that
12 and detained that individual.

13 Q. Okay. "That individual" being Miguel Ortega?

14 A. Yes.

15 Q. All right. How did you go about detaining
16 Miguel Ortega?

17 A. I think I grabbed him, and it was -- at that
18 time I grabbed him, spun him around and handcuffed him
19 and took him out of the yard.

20 Q. Grabbed what part of his body?

21 A. I don't remember if I grabbed the front of his
22 arm or the back. It was enough to spin him around.

23 Q. And so you spun him around and did what?

24 A. Handcuffed him.

25 Q. Did he resist?

1 A. No.

2 Q. And so once you handcuffed him, did you have
3 to put him down on the ground to do that?

4 A. I don't believe we put him down on the ground.
5 I think we were up against the porch area. I don't
6 think I had to put him on the ground to do it.

7 Q. Is this a raised porch that we're talking
8 about?

9 A. I remember he had to come down the steps. I
10 don't remember the exact details of the porch. But you
11 do have to come down steps.

12 Q. So it is some number of steps up off the
13 ground, whether it's one or two or more?

14 A. I don't know.

15 Q. Okay. And at this point you had Miguel Ortega
16 up against the side of that porch?

17 A. Miguel -- I was dealing with him -- it's
18 Miguel?

19 Q. Yes.

20 A. Yes.

21 Q. Okay. Did you accomplish the detention and
22 handcuffing of Mr. Ortega by yourself?

23 A. I believe so, but I don't remember. I know
24 that at the time more people were showing up.

25 Q. By "more people", you mean other police

1 being handcuffed?

2 A. Said? No.

3 Q. Anything else that he did, other than what
4 you've already told us?

5 A. It would be the actions of his response to
6 that being his brother, the aggressively coming off the
7 stairs, the targeting in to where I know Officer
8 Alcantar is at, this is what led me to believe that he
9 was going to confront Officer Alcantar where I had to
10 intervene.

11 Q. And at this point you didn't see what Officer
12 Alcantar was doing; is that correct?

13 A. No, I was more busy making sure that he was
14 safe from individuals in the crowd.

15 Q. So it's correct that you did not see that?

16 A. Correct.

17 Q. At any time from the time that you first
18 contacted Miguel Ortega until the time he was placed in
19 a police car, did he resist?

20 A. No.

21 Q. Did you place him in the car yourself?

22 A. Yes.

23 Q. Was anyone else in the police car when you
24 placed Miguel Ortega into the police car?

25 A. No.

1 A. I'm sure at one point I did.

2 Q. Did he show you identification?

3 A. You know, I don't remember if he showed me or
4 I just took it down.

5 Q. Did Officer Alcantar ever speak with Miguel
6 Ortega, to your knowledge?

7 A. You know, I don't know if Ramon did or not.

8 Q. At any time did you get the impression that
9 Miguel Ortega was under the influence of any kind of
10 intoxicating beverage or drug?

11 A. No. I mean, he could have had the smell of
12 alcohol on him, but not to the point where I thought he
13 was so intoxicated that he needed to go to jail for
14 being too intoxicated.

15 Q. Do you remember whether or not he had the
16 smell of alcohol on him?

17 A. I do not, and I didn't do the test for that.

18 Q. Did you notice whether or not anyone else at
19 the scene appeared to be intoxicated or under the
20 influence of anything?

21 A. I wasn't doing that kind of investigation. I
22 wasn't trying to look for that.

23 Q. Okay. Was there any evidence at the scene of
24 drinking or drug use?

25 A. Again, there was nothing of what we were

1 looking for at all. We weren't trying to get to that
2 point, so no. It could have been, but I wasn't looking
3 for it, so I don't know.

4 Q. Did you ever figure out into whose car you had
5 placed Miguel Ortega?

6 A. I do not remember whose car I had placed him
7 in.

8 Q. Do you remember whether or not Miguel and
9 Benjamin Ortega were ever placed together in the same
10 patrol car?

11 A. I don't believe so. I think we kept them
12 separate.

13 Q. At some point Mr. Miguel Ortega was released?

14 A. Yes.

15 Q. And did you do that?

16 A. Yes, I did.

17 Q. Anything else you can recall of any
18 conversation between you and Miguel Ortega that you
19 haven't already told us?

20 A. No.

21 Q. Did you ever overhear any conversation between
22 Officer Alcantar and either Benjamin or Miguel Ortega?

23 A. No.

24 Q. When you released Miguel Ortega, tell me what
25 you did.

1 Q. All right. So let me rephrase the question.

2 Other than the movement of Miguel Ortega from
3 the porch down toward the yard where Officer Alcantar
4 was with Benjamin Ortega, were you aware of any verbal
5 or physical threat made to any police officer at the
6 scene?

7 A. No.

8 Q. How long were Miguel and Benjamin Ortega
9 detained in the police cars?

10 A. I would say maybe 10 minutes at the most. It
11 wasn't a very long time, once the situation had gotten
12 calmed down. But I couldn't give you the exact time. I
13 wasn't keeping track.

14 Q. Now, what is an FC?

15 A. Field contact report.

16 Q. And as an officer, are you supposed to fill
17 out -- or one of the pair of officers supposed to fill
18 out a field contact report every time you have an
19 incident where you detain someone?

20 A. Yes. It's either that or a citation or a
21 police report.

22 Q. And was a field contact report prepared for
23 the contact that you and Officer Alcantar had with
24 Benjamin and Miguel Ortega?

25 A. By me?

1 Q. And that's the PC 148?

2 A. Yes.

3 Q. Because the other thing you referred to of
4 leaving the curb suddenly into the street, that's just
5 an infraction.

6 A. Correct.

7 Q. Has there been a policy change instituted at
8 OPD since the date of this incident with regard to
9 calling a supervisor to the scene?

10 A. You know, we've had so many policy changes
11 since the negotiated settlement agreement, which started
12 taking into effect probably in 2006, that the policy has
13 changed so many times I couldn't even tell you when they
14 changed. But as a supervisor now, they call me for
15 in-custody felony arrests. I will be called to the
16 scene where I need to approve the arrest.

17 Q. Okay. And you are a supervisor now, but you
18 weren't then; is that correct?

19 A. Correct.

20 Q. Okay. Now, you say this settlement that was
21 started to be instituted in 2006, settlement of what?

22 A. We call it the NSA, negotiated settlement
23 agreement. It was a lawsuit from the city.

24 Q. Was that the lawsuit involving the writers?

25 A. Yes.

1 did you say?

2 A. I think that we said that there was a crowd,
3 but I don't remember the exact wording that we used.

4 Q. And you requested backup?

5 A. I think we just said that there was a crowd.
6 I think it was assumed that backup would come.

7 Q. When did the first backup arrive?

8 A. Again, I do not know because now we were
9 dealing with the incident.

10 Q. Did anyone arrive before you and Officer
11 Alcantar arrived at the house on 62nd Avenue?

12 A. I don't believe so.

13 Q. Okay. When Officer Alcantar entered the yard,
14 was there any other officer present at the scene other
15 than you?

16 A. You know, I don't believe so.

17 Q. Did you ever get close enough to Benjamin
18 Ortega to determine whether or not he was under the
19 influence of any liquor or drug?

20 A. No.

21 Q. Did you ever see any indication, anything to
22 indicate to you that he might be?

23 A. No.

24 Q. Other than what you have told us about your
25 interaction with Miguel Ortega in terms of spinning him

1 neck?

2 A. Not that I can think of.

3 Q. So if an officer applied a hold using fingers
4 to the side of a subject's neck, would that be improper
5 as far as what you're trained as a police officer?

6 A. Again, now you're going into situations. What
7 is exactly going on? Is this a life-and-death
8 situation? Are they in defense of their life? That's
9 such an open-ended variable that I could never make.

10 Q. Okay. Fair enough.

11 Given a situation where an officer is
12 detaining a smaller person who is not threatening or
13 resisting, is it proper for an officer, based on your
14 training, to apply any kind of hold that involves
15 placing pressure on the sides of the subject's neck with
16 the fingers of the officer?

17 A. Again, you're saying if this person was
18 complying completely, there would be no use of force
19 because you wouldn't have to use force because they
20 would have turned around and put their hands behind
21 them. So you're making -- I'm sorry. You're making --
22 it's too open, too vague.

23 Q. I'm asking you to make certain assumptions.
24 I'm asking you to assume a large officer, a small
25 subject, compliance, and the application of force by the

1 officer's fingers to the side of the subject's neck.

2 A. Okay. Again, the small -- the size doesn't
3 matter. It's the word you're using, the word
4 "compliance", and again, if they were complying, there
5 would be no need to use force.

6 Q. So based on your training, it would be
7 improper to use force?

8 A. If there is compliance.

9 Q. What if there's physical compliance but verbal
10 protestation?

11 A. Again, you're saying if they're doing exactly
12 what they're ordered to do, which is compliance as I'm
13 defining it, there would still be no use of force
14 because they would be complying.

15 Q. In which case the application of any force
16 would be excessive?

17 MR. VERBER: I'm going to object that it calls
18 for an expert opinion in which this witness may not be
19 qualified to provide.

20 MR. JACOBSEN: Q. I'll qualify that. Based
21 on your training.

22 A. Again, the force needed to effect the arrest
23 may be the twist lock. Now that's considered force for
24 us, so you would still need to touch them, twist lock,
25 put the handcuff on, grab the hand and put the other

1 handcuff on. So there's still -- even on full
2 compliance, we're still touching. There's still some
3 level of a control hold being used.

4 MR. VOSE: If I could just interrupt for a
5 second.

6 (Discussion off the record.)

7 THE WITNESS: Did that one say '06 on there?

8 Oh, I was mistaken on my testimony because we
9 had one come out first that was in the rough, so this
10 did come into effect -- well, the back page will tell
11 you exactly. Parts of this it came into effect at this
12 time. I was wrong with saying it didn't come into
13 effect at this time. We've had so many policies within
14 the last couple of years. This one did come into effect
15 for the most part, parts of it did, and I think there's
16 a back page where you see where it was revised, changed,
17 where they signed.

18 MR. JACOBSEN: Q. This handbook is dated
19 February 17th, 2006, correct?

20 A. Correct. And this is the one that we're
21 actually using now, supervisors.

22 Q. Okay.

23 A. Because it just changed.

24 Q. If an officer, based on this handbook dated
25 February 17th, 2006, if an officer uses force to effect

1 an arrest or detention, does the officer have a
2 requirement to report that use of force to his or her
3 supervisor?

4 A. Yes.

5 Q. And how soon does that use of force need to be
6 reported?

7 A. For this policy now, it is on scene they call
8 me and tell me that they've had a use of force.

9 Q. For the policy in effect on February 17th,
10 2006?

11 A. There's parts of it that came into -- it's
12 weird -- that came into effect, so -- but I believe it
13 started at that time were the levels. Because sometimes
14 level 4s didn't have to be reported immediately. You
15 could actually write the report and hand it to your
16 sergeant, and then it changed.

17 Q. I'm looking at one of the last pages of the
18 handbook here. Is this the page to which you're
19 referring that says that this document, the use of force
20 handbook, came into effect?

21 A. No, this is the review board.

22 Q. So we're looking for one of the last pages of
23 K-4?

24 A. No, because you're in K-3, the paging of K-3,
25 if it's the last pages of the K-3 part. I remember

1 weapon. If there was a rock laying on the ground, it
2 can be a weapon. A person's body can be a weapon if
3 they use it correctly. There's always the potential to
4 have weapons.

5 So did I believe there were no weapons near or
6 around me? There was plenty, it's just they were never
7 used as a weapon.

8 Q. Did you consider the proximity of any weapon
9 to Benjamin Ortega at the time?

10 A. Again, I wasn't dealing with him at all.

11 Q. Okay. So is it fair to say you didn't make
12 that consideration?

13 A. Correct.

14 Q. Was there any other option available? That's
15 the next criterion, "Availability of other options."
16 Was there any other option available to Officer Alcantar
17 to achieve whatever it was he was trying to achieve?

18 MR. VERBER: Objection. Calls for
19 speculation.

20 MR. VOSE: Yeah, I was going to say the same
21 thing. You're asking him -- the decision to use the
22 force is within the officer's perception. It would be
23 speculation for him to say what was going through
24 Officer Alcantar's mind.

25 MR. JACOBSEN: Q. I'm not asking you to

1 speculate what Officer Alcantar was thinking, but you
2 were on the scene, you walked in immediately after
3 Officer Alcantar, you saw Benjamin in the yard and you
4 saw Officer Alcantar approach him. Were there any other
5 options available to Officer Alcantar short of the use
6 of physical force?

7 MR. VOSE: I'm going to object again, and he's
8 already testified that as soon as he got in the yard,
9 his focus was turned to Miguel.

10 MR. JACOBSEN: Well, you can object, but let's
11 not testify for the officer, okay?

12 THE WITNESS: Again, Ramon approached him,
13 he's coming off the porch. All my attention is now on
14 him.

15 MR. JACOBSEN: Q. Okay. So is that something
16 which you didn't consider at the time?

17 A. Again, you're asking me to consider something
18 that I'm not a part of. I'm a part of Miguel, and I
19 have to now take into consideration me dealing with him.

20 Q. Okay. So as far as the interaction between
21 Officer Alcantar and Benjamin Ortega, you didn't
22 consider the availability of other options?

23 A. I am not even a factor in -- I could never
24 consider what they were doing.

25 Q. The next criterion is, "Seriousness of the

1 suspected offense or offenses." In this case the
2 suspected offenses were, one, potentially crossing the
3 street improperly, and second, not stopping when you
4 wanted them to stop, correct?

5 A. I think you're really simplifying that. But
6 if you were going just very black and white issue, yes.

7 Q. The next criterion is, "Training and
8 experience level of the member or employee?" Now, you
9 already told us that you had more time on the force than
10 Officer Alcantar.

11 Do you know what his experience level was at
12 the time?

13 A. I didn't remember how many years Ramon had on
14 him at the time.

15 Q. The next criterion is, "Potential for injury
16 to member, employee, third party or the subject."

17 At the time that you entered the yard, was
18 there any potential for injury to anyone?

19 A. There is always potential for injury.

20 Q. What was the potential for injury at the time
21 that Officer Alcantar entered the yard?

22 A. He could trip and fall. I mean, you're going
23 into a ground that you don't know, you've got a crowd
24 that's bigger than you are. There's always the
25 potential of you may get hurt.

1 was going to effect an arrest.

2 Q. Did you intend to arrest anyone else when you
3 entered the yard, other than Benjamin?

4 A. No.

5 Q. In May of 2006 was it your habit and practice
6 to file field contact reports each time you made a field
7 contact?

8 A. If there was a detention, yes. If there was a
9 contact where I just talked to the guy, no.

10 Q. Did the regulations require that you file an
11 FC even if you just talked to someone?

12 A. I don't believe it did at the time. For just
13 normal conversations to, "Hey, how are you doing?"
14 Either we knew each other or not.

15 Q. Well --

16 A. And then to get one, too, you have to ask for
17 identification. Again, if you don't have a lawful
18 detention or the ability to ask for that, I can't fill
19 out, "I talked to a guy on a corner."

20 Q. Certainly in a situation such as that
21 involving Benjamin and Miguel Ortega, it would have been
22 your custom and practice to file an FC for something
23 like that, correct?

24 A. Yes.

25 Q. How many detentions did you actually --

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Oakland, California 94612

Date: 1/31/08

COPY

Dear Deponent,

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure, please be advised that the original transcript of your deposition taken on January 3, 2008, is ready for your review and corrections, if necessary. The original will be held in our office for a period of 30 days, at which time it will be forwarded to the noticing attorney.

If your attorney has ordered a copy, please review the transcript. Reading, correcting and signing of depositions is an option and is not mandatory. If changes are necessary, please do so on the correction sheet provided.

If your attorney has not ordered a copy of the transcript, you may call to make an appointment to review the original in our office.

Thank you,

Clark Reporting

APRIL DAWN HEVEROH
CSR #8759

cc. All counsel
Original transcript

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COUNTY OF CONTRA COSTA]

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3
4 I, April Dawn Heveroh, Certified Shorthand
5 Reporter No. 8759 in and for the State of California, do
6 hereby certify that the deponent, BERNARD ORTIZ, was,
7 by me, duly sworn to tell the truth, the whole truth,
8 and nothing but the truth in the within-entitled cause;
9 that the foregoing is a full, true and correct
10 transcript of the proceedings had at the taking of said
11 deposition, to the best of my ability.
12
13

14 Date: _____, 2008
15

16 April Dawn Heveroh

APRIL DAWN HEVEROH

17 CSR NO. 8759

State of California
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